

Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption. See 86 Ill. Adm. Code 130.210. (This is a GIL).

September 27, 2001

Dear Xxxxx:

This letter is in response to your letter dated May 8, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am requesting a private letter ruling regarding the following specific subject matter.

A vending machine operator dispenses pop, candy and potato chip items from its vending machine at a facility that has a small lunchroom on-site. My understanding is that, in general, the high rate of tax would apply to the pop and the low rate to the chips and candy. However, it appears there could be some question on this application of the high versus low rate, in light of the fact that there is an on-site room for consumption at this specific location.

Could you please provide me with the correct use of high versus low rates in reference to my situation? Should you need any further information, please feel free to contact me.

I appreciate your prompt response and look forward to finding out the Department's position on this matter.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine, and medical appliances under the Retailers' Occupation Tax Act. As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared by the retailer for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food for human consumption that is to be consumed off the premises where it is sold includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine. This is subject to the low rate of tax regardless of whether on-premises facilities for consumption are provided at that location. For example, a candy bar sold through a vending machine is subject to the low rate of tax. See Section 130.310(b)(7).

Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310(b)(5).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:  
Jerilynn T. Gorden  
Senior Counsel – Sales and Excise Taxes

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